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US EPA RECORDS CENTER REGION 5



464175

January 14, 2003

**FOR INCLUSION IN THE ADMINISTRATIVE RECORD
URGENT - REQUIRES IMMEDIATE ATTENTION**

-BY FAX AND U.S. MAIL-

Thomas Nash, Esq. (C-14J)
Associate Regional Counsel
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3507

Re: Chemical Recovery System ("CRS") Site, OH - De Minimis Settlement
Union Carbide Corporation

Dear Mr. Nash:

I recently learned that USEPA is planning to issue *de minimis* settlement offers for the CRS Site in Elyria, OH based upon a TechLaw volumetric report. The TechLaw report combined the waste-in volumes for both Union Carbide Corporation and its parent, The Dow Chemical Company. This is a legal error that should not have occurred. On behalf of Union Carbide Corporation, I request that the U.S. EPA immediately rectify this mistake.

The Dow Chemical Company responded in September 2001 to an information request from the U.S. EPA. Union Carbide had become a wholly-owned subsidiary of The Dow Chemical Company several months earlier, on February 6, 2001. The Dow Chemical Company, in order to be fully responsive to the U.S. EPA's information request, requested that Union Carbide do a record search to determine if it had any connection to the CRS Site. Union Carbide complied with its parent's request and as indicated in The Dow Chemical Company response, Union Carbide did not find information connecting it to the CRS Site in Ohio. The fact that The Dow Chemical Company included information on Union Carbide in its response is not and should not have been construed as an assumption of liability by The Dow Chemical Company for its new subsidiary.

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Union Carbide Corporation is a separate legal entity and its liability, if any, for the CRS Site should not be attributed to its parent. As indicated below, the alleged Union Carbide transactions at issue occurred in the early 1970's, long before Union Carbide became a subsidiary of The Dow Chemical Company. Further, The Dow Chemical Company has not assumed the environmental liabilities, if any, of its subsidiary Union Carbide Corporation at the CRS Site. Finally, there is no legal authority under CERCLA that would require TechLaw to combine the volumes of two separate legal entities.

Unfortunately, apparently because of The Dow Chemical Company response to EPA's information request, TechLaw erroneously combined waste-in volumes for Union Carbide Corporation and The Dow Chemical Company. See the 11/4/01 Revised Draft of the Waste-in List Assumptions.

On the basis of cash payment journals, the TechLaw Scrap Solvent for Reclamation Charges Waste-In List shows four entries for Union Carbide in the 1970-1972 time period and these four entries are assigned erroneously to The Dow Chemical Company. The total gallonage shown for these four entries is 2,913 (0.3% of the total 911,522 volume on that waste-in list). While Union Carbide has no information that confirms or denies these alleged transactions, these transactions should be considered transactions of Union Carbide Corporation and not transactions of The Dow Chemical Company.

In sum, on behalf on my client, Union Carbide Corporation, I request that TechLaw's assumptions be revised and that both Union Carbide Corporation and The Dow Chemical Company be treated as the separate legal entities they are. This will give both companies the fair opportunity to receive *de minimis* offers at the CRS Site.

Sincerely,



Carol L. Dudnick
Counsel for Union Carbide Corporation